

**CALIFORNIA CODE OF REGULATIONS  
TITLE 3 – FOOD AND AGRICULTURAL CODE**

**CHAPTER 3. Milk Stabilization and Marketing of Milk and Dairy Products**

**Subchapter 2. Sale of Manufacturing Milk, Market Milk and Dairy Products**

**Article 3. Payment by Handlers to Producers for Manufacturing Milk and Market Milk**

**Section 2042. Allocation of Handler Payments to Producers for Bulk Milk for Surety Bond and Milk Producers Security Trust Fund Coverage**

- (a) For the purpose of determining whether or not a handler has properly paid producers for milk purchased, all payments shall be applied first to bulk milk sales for all amounts due and payable on the date the payment is made, except in the following situations:
- (1) If the handler and producer have historically engaged in a pattern of allocating payments in a manner different from that described above, and that pattern is documented in writing, then payments may be allocated in accordance with that pattern, as long as the execution of the documentation by both parties is simultaneous with the beginning of the pattern of allocating payments; or,
  - (2) If, simultaneously with payment, the handler delivers to the producer a written notice or remittance device which notifies the producer that the payment is for a specific invoice, delivery, commodity, expense, allowance or other charge.
- (b) Payments by a handler to a producer for the purposes of any action by the Secretary associated with a surety bond or the Fund shall be credited first to interest and then to the remaining unpaid principal. Upon the payment of all outstanding interest, principal payments shall be applied first to the amount due for the oldest unpaid delivery, and then successively, in sequence, to the amounts due for the next oldest unpaid delivery.

Authority: Sections 407 and 61891, Food and Agricultural Code (FAC)  
Reference: Sections 62185, 62190, 62501, 62623, FAC

## **Subchapter 4. Milk Producers Security Trust Fund**

### **Article 1. Eligibility for Coverage**

#### **Section 2100. Definition of Beneficial Ownership Interest**

- (a) For purposes of Milk Producer Security Trust Fund (hereinafter "Fund") coverage criteria for milk shipped by a producer to a handler, as set forth in Food and Agricultural Code Section 62580, the term "beneficial ownership interest" shall be defined as set forth in (b) of this Section.
- (b) Except as otherwise provided by law, any person or any other legally constituted business entity, including but not limited to, a corporation, limited partnership, limited liability company, joint venture, association, or any other form of cooperative ownership, shall be deemed to have a beneficial ownership interest through owning an interest in a handler, as defined in Food and Agricultural Code Section 62521(d), in any form, such that they have any interest in the profits, losses, or equity of that handler, with the authority to influence or create policy which affects the handler's policies and business decisions.
- (c) Authority to influence or create policy includes service in any discretionary capacity associated with a handler's policies and business decisions, and shall not be limited to service in an official capacity, such as a member of a Board of Directors, or employment as an officer or any administrative position.
- (d) An individual possesses a beneficial ownership interest only if he/she owns a 10 percent or greater interest in the equity and/or profits and/or losses of a handler, with the exception that an individual who owns a 10 percent interest or greater interest as community property with his/her spouse shall be deemed to possess a beneficial ownership interest.
- (e) A producer who has extended credit to a handler does not possess a beneficial ownership interest unless the terms of the agreement under which such credit was extended permit the producer to acquire a 10 percent or greater ownership interest in the handler in any form.
- (f) For the purpose of determining beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their members' milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.
  - (1) A cooperative will be deemed to have a beneficial ownership interest in a handler if any member of that cooperative owns a 10 percent or greater interest in the handler's gross revenues and /or profits and/or losses and/or equity capital or stock.

- (2) A cooperative shall also be treated as having a beneficial ownership interest in any handler in which the cooperative has a 10 percent or greater interest in such handler's profits and/or losses, equity capital or stock.
- (g) Producers and cooperative members specifically possess beneficial ownership interests, beyond the general provisions of (b) and (c) in this Section, in the following circumstances:
- (1) A producer who is a member of a cooperative has a beneficial ownership interest in that cooperative.
- (2) All members of a cooperative, including producers, additionally have beneficial ownership interest in any other cooperatives in which their cooperative has such an interest.
- (3) All members of a cooperative, including producers, have a beneficial ownership interest in any handler in which their cooperative has a beneficial ownership interest.
- (h) For the purpose of determining beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their members' milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.
- (1) In addition to the general provisions of (b) and (c) in this Section, a cooperative will be deemed to have a beneficial ownership interest in a handler if any member of that cooperative owns a 10 percent or greater interest in the handler's gross revenues and/or profits and/or losses and/or equity capital or stock.
- (2) In addition to the general provisions of (b) and (c) in this Section, a cooperative shall also be treated as having a beneficial ownership interest in any handler in which the cooperative has a 10 percent or greater interest in such handler's profits and/or losses and/or equity capital or stock.
- (i) For purposes of determining whether a corporation possesses a beneficial ownership interest, there are "S" corporations as defined and regulated by the Internal Revenue Service, and "C" corporations, which are all corporations other than "S" corporations.
- (1) In determining whether an "S" corporation has a beneficial ownership interest in a handler, all beneficial ownership interests in a handler held by any person/entity who owns or controls any of the "S" corporation's stock shall be deemed to be owned by the "S" corporation.

- (2) In determining whether a “C” corporation has a beneficial ownership interest in a handler, all beneficial ownership interests in a handler held by any person/entity who owns five percent or more of the “C” corporation’s stock, regardless of class, shall be deemed to be owned by the “C” corporation.
- (3) In addition to the general provisions of (b) and (c) in this Section, any beneficial ownership interest of a “C” corporation shall be attributed to any stockholder who owns a 5 percent or greater interest in any class of stock of the corporation.
- (j) A “Controlled Group of Corporations” (hereinafter “CGC”) is defined as any group of corporations, partnerships, joint ventures or any other business entities, where a common parent entity owns or controls the largest number of outstanding shares, or any other ownership interest, in each member of the group.
- (1) In addition to the general provisions of (b) and (c) of this Section, if a CGC cumulatively owns, as the parent entity of any group of corporations, partnerships, joint ventures or other business entities, as defined in (j) of this Section, a 10 percent or greater interest in any handler derived from these entities, the CGC shall be deemed to have a beneficial ownership interest in that handler.
- (2) In addition to the general provisions of (b) and (c) of this Section, if a producer or cooperative owns a 10 percent or greater interest in a handler, and that handler is also a member of a CGC, the producer or cooperative shall be deemed to have a beneficial ownership interest in all corporations, partnerships, joint ventures or other business entities of the CGC.
- (3) In addition to the general provisions of (b) and (c) of this Section, any beneficial ownership interest of an “S” corporation shall be attributed to each stockholder of the corporation.
- (4) Any beneficial ownership interest held by any common owner or subsidiary company of a CGC shall be considered as being held by each member of the group.
- (k) A partnership, limited partnership, joint venture, estate or trust will be deemed to own any beneficial ownership interest attributed to any of its partners or beneficiaries.
- (1) A beneficial ownership interest owned by a partnership shall be attributed to each partner of the partnership.

- (2) Joint ventures and/or similar arrangements involving the participation of corporate participants shall be treated as partnerships.
- (3) All participants in joint ventures and/or similar arrangements shall be treated as partners.
- (4) In situations involving trusts and estates, where the beneficiaries have no rights to direct or influence the entity's decisions, these beneficiaries shall be treated like "C" corporation shareholders.

- (1) In addition to the general provisions of (b) and (c) of this Section, any beneficial ownership interest owned by a Limited Liability Company (hereinafter "LLC") shall be attributed to each member of the company. Conversely, any beneficial ownership interest owned by a member of a LLC shall be attributed to the LLC.

Authority: Section 407, FAC

Reference: Sections 62580 and 62587, FAC

### **Section 2101. Definition of Milk Eligible for Trust Fund Coverage**

"Milk" means bulk milk of any composition of milk solids-not-fat, fat, and fluid carrier that has not been altered in any way that further restricts its usage from the milk in its original or natural form. Milk that has been altered by adding processed products, whether dairy or non-dairy, other than for fortifying bulk milk, bulk low fat milk, bulk reduced-fat milk, or bulk skim milk, changes the bulk product such that it can no longer be considered as farm or producer milk, and is therefore ineligible for Trust Fund coverage.

Authority: Section 407, FAC

Reference: Section 62521(e), FAC

## **Article 2. Payment of Claims**

### **Section 2102. Calculation of Trust Fund Obligation to a Producer**

The amount paid to each eligible producer shall be determined as follows:

- (a) The total amount owed by the handler to all producers shall be called the "gross default". From the gross default, any surety bond recovery shall be deducted. The resulting amount is called the "adjusted default".
- (b) From the adjusted default, any amounts ineligible for coverage per FAC Section 62580 shall be deducted. The resulting amount is called the "net default".

(c) The \$200,000 deductible required by FAC Section 62624 shall be deducted from the net default. The resulting amount is the total maximum exposure of the Fund.

(d) An eligible producer who claims reimbursement from the Fund will be paid his/her pro rata shares from the total maximum exposure amount.

Authority: Section 407, FAC

Reference: Sections 62580, 62623, and 62624, FAC